Supreme Court, U S
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No._____

IN THE
SUPREME COURT OF THE UNITED STATES

Marie K. Yanna - Trombley
Plaintiff, pro se,
Petitioner

v.

Saturn Corporation
(Subsidiary of General Motors Corp.)
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

PETITION FOR WRIT OF CERTIORARI

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Question Presented for Review #1

Whether the United States Court of Appeals for the Sixth Circuit decided an important question of federal law in a way that conflicts with relevant decisions of this Supreme Court of the United States?

Question Presented for Review #2

Whether the United States Court of Appeals for the Sixth Circuit departed from the accepted and usual course of judicial proceedings when the Court denied Petitioner Due Process as provided by the Fifth Admendant of the United States Constitution?

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Petition for a Writ of Certiorari

Marie K. Yanna- Trombley , respectfully petitions for a writ of Certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit in this case.

Opinions and Orders

In the United States Court of Appeals for the Sixth Circuit , unpublished opinion in case 05-6419 the Court concluded they found the Supervisor hung up on Plaintiff's call and hung up on her again as she attempted to call 911. The Court concluded there is an arguable adverse action shown in this case which was the eventual termination of Yanna-Trombley's employment. The Court concluded there is no genuine issue of material fact. The summary judgment for defendant is therefore affirmed. Order entered July 20, 2006 reproduced at 1a.

An order denying Petition for Rehearing with Suggestion for Rehearing En Banc entered on October 27, No Judge in the United States court of Appeals for the Sixth Circuit having requested a vote on the suggestion for rehearing en banc, the petition for rehearing was referred to the original panel reproduced at 8a.

Order granting Stay of Mandate in the United States Court of Appeals for the Sixth Circuit on November 13, 2006 reproduced at 10a.

Jurisdiction

The order sought to be reviewed was entered on July 20, 2006 in the United St.es Court of Appeals for the Sixth Circuit.

Order denying Petition for Rehearing with Suggestion for Rehearing En Banc on October 27, 2006.

This petition is timely under Supreme Court rule 13.3 because it is being filed within 90 days of the entry of the order denying Petition for Rehearing with Suggestion for Rehearing En Banc on October 27, 2006.

The district court had federal question jurisdiction over the plaintiffs' claims under the Title VII of the Civil Rights Act of 1964, employment discrimination. Specifically 42 U.S.C. § 2000e-5 pursuant to 28 U.S.C. § 1331. The Court of Appeals had jurisdiction to review the final judgment of the district court pursuant to 28 U.S.C. § 1291. The jurisdiction of this court is invoked under 28 U.S.C. § 1254.

The order of the United States Court of Appeals for the Sixth Circuit sought to be reviewed was entered on July 20, 2006.

Statutory Provisions

Title VII's 42 USC Sec. 2000e-3 [section 704]

(a) Discrimination for making charges, testifying , assisting, or participating in enforcement proceedings. It shall be an unlawful employment practice for an employer to

discriminate against any of his employees or applicants for employment, ... to discriminate against .... , because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

The Civil Rights Act of 1991 42 U.S.C. 1981a . (a) Right to recovery . (1) Civil Rights.- In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964(42 U.S.C.2000e-5, 2000e-16) against a respondent who engaged in unlawful intentional discrimination prohibited under section 703 , 704, or 717 of the Act (42 U.S.C.2000e-2, 2000e-3, 2000e-16) .....the complaining party may recover compensatory and punitive damages as allowed in subsection

(b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

42 U.S.C. 1981a .(c) Jury Trial, If a complaining party seeks compensatory or punitive damages under this section -

(1) any party may demand a jury trial.

The Americans with Disabilities Act of 1990, Titles I and V.

42 USC Sec. 12102.[section 3] (2)(c) the term disability means , with respect to an individual being regarded as having such impairment.

Title 1 of the ADA -Employment .

Sec12112 [sec 102] (a)... No covered entity shall

discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Sec12112 [sec 102] (b)..."discriminate"includes - (1) limiting , segregating, or classifying a.... employee that in a way that adversely affects the opportunities or status of such ... employee because of the disability of such ....employee. (3) utilizing standards, criteria, or methods of administration- (A) that have the effect of discrimination on the basis of disability; .(6) using qualification standards , ... or other selection criteria that screen out or tend to screen out an individual with a disability.....

unless selection criteria , as used by the covered entity, is shown to be job related for the position in question and is consistent with business necessity....

Title V of the ADA,. includes a provision prohibiting either (a) coercing or threatening or (b) retaliating against the disabled or those attempting to aid people with disabilities in asserting their rights under the ADA.

29 CFR 1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of section 703 of title VII. Unwelcome sexual advances....and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct s made either explicitly or implicitly a term an condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

The Age Discrimination in Employment Act of 1967. Prohibition of Age Discrimination,

29 U.S.C Sec 623 [Section 4] (a) It shall be unlawful for an employer - (1) to fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions , or privileges of employment, because of such individuals age...(2) to limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individuals age...

29 U.S.C. § 201,et seq. Fair Labor Act of 1938, as amended. Sec 6 Minimum wage Every employer shall pay to each of his employees who in any work week is engaged in commerce or in production of goods for commerce, or is employed in an enterprise engaged in commerce or in production of goods for commerce, wages at the following rates ; (1) except as otherwise provided in this section ..... not less than 5.15 an hour beginning September 1, 1997.

Section 16 (b) Any employer who violates this provision of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in addition equal amount as liquidated damages.

Constitutional Provisions

The Fifth Amendment of the United States Constitution states that no person shall be deprived of life, liberty, or property without due process of law.

The Seventh Amendment of the United States Constitution states that in suits at common law, where value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury , shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.

Statement Of The Case

The basis for Federal Jurisdiction in the court of first instance is Title VII of the Civil Rights Act of 1964 42 U.S.C. § 2000e-5 pursuant to 28 U.S.C. § 1331.

This Case presents an important issue (s)with denial of Due Process including improper application of settled Precedent , Standards and Rules .

Summary of Plaintiff's Second Amended Complaint Under Title VII of the Civil Rights Act of 1964

The second amended complaint was received in the District Court on January 14, 2005 and was not granted and filed until August 15, 2005.

Plaintiff sought equitable and other relief under 42U.S.C. section 2000e-5 , section 1981(a) see (Second Amended Complaint ¶ 1 and ¶ 22 to ¶ 30 and prayer).

The Plaintiff, Marie Yanna- Trombley (Yanna-Trombley) at time of filing the complaint is a 48 years old citizen of the United States (Second Amended Complaint ¶ 7) was employed by Defendant General Motors since 1977. In 1991, she transferred to the Saturn, Spring Hill Manufacturing Plant which is a subsidiary of General Motors (Saturn/GM) in which she has over 25 years combined service (Id., ¶ 8).

In October 2002, Marie K. Yanna- Trombley and Saturn Corp. a subsidiary of General Motors settled a previous Title VII case 1-02-0045, reproduced at 22a.

Plaintiff claims retaliation against her started almost immediately after she returned to work (id., ¶ 10). Plaintiff claims she was not reinstated according to settlement agreement (id.,¶ 11). On about August 6, 2003 Saturn /GM disciplined plaintiff and placed in her a disciplinary step called the Red Zone because she made complaints (id.,¶ 13). On August 15, 2003, Ms. Yanna- Trombley filed a complaint with the Tennessee Human Rights Commission ("THRC"), and received a notice of right to sue on January 20, 2004 (id., ¶ 4).

Plaintiff was stopped from working (id.,¶ ¶ 17,18). Plaintiff's supervisor, Dave Salima a large man over 6 feet tall, hung up the phone on Ms. Yanna- Trombley and he also slapped her hands away as she tried to redial for help . Yanna- Trombley went to the Police to make a complaint against her supervision and in retaliation, Saturn/ GM, withdrew plaintiffs earned wages being $14,51.86 from her bank (id., ¶ 17), reproduced at 14a

After going to the police to make a complaint, Plaintiff was restricted from Saturn property and not

allowed to enter unto the property to work (id., ¶ ¶18, 19), reproduced at 19a.

Yanna- Trombley then received letters after being restricted from work that Saturn /GM considered her a voluntary quit (id., ¶ ¶17.18).

Ms. Yanna- Trombley filed a second charge with the THRC on October 29, 2003 and received a second notice of right to sue executed by the EEOC Area Director dated February 27, 2004 (id., ¶ 5).

The Decision below conflicts with resent U.S. Supreme Court Rulings

Plaintiff produced evidence of being placed in the Red Zone a disciplinary action for making complaints, being stopped from calling police, being restricted from work because she went to the police see 21a, and the right to her earned wages being taken away see14a, including the loss of her over 25 year career with Saturn /GM.

> The anti-retaliation provision seeks to prevent employer interference with "unfettered access' to Title VII's remedial mechanisms. *Robinson*, 519 U.S., at 346. It does so by prohibiting employer actions that are likely "to deter victims of discrimination from complaining to the EEOC," the courts, and their employers *Ibid.; Burlington Northern & Santa Fe Railway Co. v. White*, 126 S. Ct. 2405 U.S.,2006.

The Appeals Court found that Yanna- Trombley's supervisor hung up on her call. She returned to

the phone and attempted to call 911; the supervisor hung up on her again. See order from United States Court of Appeals for the Sixth Circuit, reproduced at 1a.

If satisfaction of an essential element of a claim is at issue, however , the jury is the proper trier of contested facts. *Arbaugh v. Y & H Corp. dba The Moonlight Café*, No. 04-944 fifth circuit 2006, quoting *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S.133, 150-151 (2000).

All that a Plaintiff has to do to defeat Summary judgment is to produce some evidence creating a genuine issue of material fact. *EEOC (Ronald W. Willis, F Appellant) v. Avery Dennison Corporation, Appellee)* 1997 FED App. 0019P (6 Cir.) .

Whether the Petitioner demonstrated on appeal that a genuine issue of material fact existed for trial?

Whether the Petitioner produced some evidence creating a genuine issue of material fact?

Whether Yanna- Trombley's being stopped from entering the Saturn/GM property to work on September 23 constitutes a material adverse action is a jury question?

Whether the withdrawal of Yanna- Trombley's earned wages from her bank account constitutes material adverse action is a jury question?

Whether the loss of her employment constitutes material adverse action is a jury question?

Whether the Supervisor Dave Salima's actions of stopping Plaintiff from calling 911 would dissuade or persuade a reasonable employee from making a complaint?

Whether the supervisor would have hung up the phone on Ms. Yanna- Trombley if she were a man?

Whether he would have hung up the phone a second time if Ms. Yanna- Trombley were a man?

Whether the Supervisors actions were hostile toward Yanna- Trombley?

Whether Supervisor Dave Salima's actions toward Ms. Yanna-Trombley are for a jury to decide?

When one displays hostility toward a gender or race in the work place, one may infer that the harassing atmosphere is "because of " the supervisor's hostility to Plaintiff's class membership. *Suders, Easton, 325 F. 3d 432 (3rd Cir. 2003)*

Title 29 ---Labor Sec. 1604.11 Sexual harassment (a) Harassment on the basis of sex is a violation of section 703 of title VII. (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Title VII provision contains materiality requirement and objective standard showing that reasonable employee would have found employer's challenged action materially

adverse, i.e. that challenged action could well dissuade reasonable employee from protected conduct. Civil Rights Act of 1964, § 704(a), 42 U.S.C.A. § 2000e -3 (a).

To establish the element of a causal link a Plaintiff is required to "proffer evidence ' sufficient to raise the inference that Plaintiff's protected activity was the likely reason for the adverse action. *Zanders v. National R.R. Passenger corp., 898 F 2d, 1135 (6th Cir. 1990)*

Whether Appellate Court erred in not taking in consideration the undisputed fact that Saturn/ GM took Yanna- Trombley's earned wages from her bank account a few days after she testified against the employer supervisor for assault . See Second Amended Title VIII Complaint also see With drawl of earned wages reproduced at 13a 14a.

A reasonable employee facing the choice between retaining her job (and paycheck) and filing a discrimination complaint might well choose the former. That is to say , an indefinite suspension without pay could well act as a deterrent, even if the suspended employee eventually received back pay.

> Cf. Mitchell, 361 U.S., 292 ("[I] t needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions"). Thus, the jury's conclusion that the 37-day suspension without pay was materially adverse was a reasonable one; *Burlington Northern & Santa Fe Railway Co. v. White,* 126 S. Ct. 2405 U.S.,2006.

Whether Yanna- Trombley proffered sufficient evidence sufficient to raise this inference that her protected

activity was the likely reasons for being placed in Red Zone, stopped from calling the police, stopped from working and withdrawal of her earned wages?

The Sixth Circuit ...,holds that a plaintiff must show an "adverse employment action", which it defined as a "Materially adverse change in the terms and conditions" of employment. *364F. 3d, at 795* ....,holding that the challenged action must "resul[t] in an adverse effect on the 'terms, conditions, or benefits' of employment". *Von Gunten v. Maryland,* 243 F. 3d 858, 866 (C.A.4 2001) *Burlington Northern & Santa Fe Railway Co. v. White,* 126 S. Ct. 2405 U.S.,2006.

Yanna- Trombley had expected to retire some time in the year 2007 (emphasis added).

Defendant's Management Terry Wonderland sent Ms. Yanna- Trombley a letter after her termination to reinstate her to a disability position. However if Ms Yanna-Trombley did not qualify for the disability position Saturn/ GM would take an adverse action toward her by taking away all her years of service that she had worked so hard for. This letter from Saturn/GM management, Terry Wonderland regarded Yanna- Trombley as disabled and would not reinstate her unless she was disabled, reproduced at 15a.

Whether Defendant's letter is evidence of the Defendants perceived disability of the Plaintiffs (Yanna-Trombley) is for a jury to decide?

Whether the Defendant's letter is material issue of fact?

Whether Defendant's letter is evidence of classifying the employee as being disabled?

Whether Defendant's letter has an adverse effect on the 'terms, conditions, or benefits' of employment?

The term "disability" means, with respect to an individual- ..... or (C) being regarded as having such an impairment, Americans with Disabilities Act of 1990 Sec. 12102. [Section 3]

(a) Disputed Facts of United States Court of Appeals For the Sixth Circuit

(1) "The only even arguable adverse action shown in this case was the eventual termination of Yanna- Trombley's employment, which Yanna-Trombley argues alternatively was a firing or a constructive discharge and defendant maintains was a voluntary quit " See Order from Court of Appeals for the Sixth Circuit reproduced at 6a.

(2) Plaintiffs (Disputed Facts) Response to Saturn Corporation's (alleged) Un disputed Facts found at Docket 61of the District Court case 1:04-cv00026, See docket reproduced at 24a

When a motion for summary judgment is made and supported as provided in this rule , an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings , but the adverse party's response , by affidavits or as other wise provided in this rule , must set forth specific facts showing that there is a genuine issue for trial . If the adverse party does not so respond, summary

judgment , if appropriate shall be entered against the adverse party, Fed. R. Civ. P. 56 (e) .

Whether Yanna- Trombley set forth specific facts showing that there is a genuine issue for trial .

Whether Yanna- Trombley produced some evidence creating a genuine issue of material fact for trial?

(b) Un-Disputed Facts of United States Court of Appeals For the Sixth Circuit

(1.) Yanna- Trombley was placed in a disciplinary action because she made complaints.

(2.) Supervisor Dave Salima hung up the phone on Yanna-Trombley and again as she tried to dial 911.

(3.) Yanna Trombley was restricted from the Saturn/ GM property. (and could not get to work),see 19a.

(4.) There was an eventual termination of Yanna-Trombley's employment.

(5.) That Yanna -Trombley did work over 25 years for Saturn/ GM.

(6.) Saturn /General Motors took earned wages away from Yanna -Trombley, see 14a.

(7.) Put in disability job.

(8.) Coerced to sign documents, see 3a.

(9.) Document (s) not regularly used in Job and intended to screen out employees who may or may not need job assistance.

(10.) Employer supervisor knew that Ms. Yanna Trombley wanted to report actions she felt were threatening

to her and protected by Title VII when he disconnected her from the phone the first time and then the second time.

> According to the majority, §704(a) does not reach all retaliatory differences in treatment but only those retaliatory acts that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Ante*, at 13 (internal quotation marks omitted). *Burlington Northern & Santa Fe Railway Co. v. White,* 126 S. Ct. 2405 U.S.,2006.

Whether the Appellate Court erred by not properly considering Plaintiff's undisputed facts and/or genuine issues of material fact .

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed .R. Civ. P. 56 (c)

If satisfaction of an essential element of a claim for relief is at issue, however, the jury is the proper trier of contested facts. *Reeves v. Sanderson Plumbing Products, Inc.,* 530 U.S.133, 150-151 (2000).

All that a Plaintiff has to do to defeat Summary judgment is to produced some evidence creating a genuine issue of material fact. *EEOC (Ronald W. Willis, F Appellant) v. Avery Dennison Corporation, Appellee) 1997 FED App. 0019P (6 Cir.)*

Due Process

Any party may demand a trial by jury of any issue triable of right by a jury, Fed .R. Civ. P. 38 (b)

(a) Whether the United States Court of Appeals for the Sixth Circuit considered issues of procedural error that Plaintiff, Petitioner raised in her Appeal

Appeal Court's order states that " On Appeal, Yanna Trombley reasserts her claims", however Appeal Court's Opinion failed to discuses or mention the errors of process and procedure raised in Plaintiff's Appeal, see Order from United States Court of Appeals for the Sixth Circuit reproduced at 3a.

Whether the United States Court of Appeals for the Sixth Circuit erred by not considering whether the district court followed Rule 56 Process and Procedure.

> (b) For Defending Party . A party against whom a claim....is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment motion in the parties favor as to all or any part thereof. Fed .R. Civ. P. 56.
>
> Case Not fully Adjudicated On . If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion , by examining the pleadings and evidence before it and

by interrogating counsel, shall if particle ascertain what material facts exists without substantial controversy and what material facts are actually and in god faith controverted .

It shall thereupon make an order specifying the facts that appear with out substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action that are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly. Fed .R. Civ. P. 56 (d).

(b) Whether the United States Court of Appeals for the Sixth Circuit has erred by not considering that disputed facts remained ?

Whether the United States Court of Appeals for the Sixth Circuit has erred by not considering Plaintiff's issue of error of the District Court denying Plaintiff's Motion for the District Court to send the Plaintiff's Response to Defendants Undisputed Material Facts in Support of Plaintiff's Appeal to the United States Court of Appeals for the Sixth Circuit, see 18a.

Whether the United States Court of Appeals for the Sixth Circuit. has erred by not considering Plaintiff's Motion was denied by the District Court because Plaintiff's disputed facts contained in her response would place matters before the appellate court that are contrary to the District Courts Memorandum and order, see 18a.

LR 56.01(c) Response to Statement of Facts. Any party opposing the motion for Summary Judgment must respond to each fact set forth by the movant either ....iii or demonstrating that the fact is disputed. ..... The response must be made on the document provided by the movant or other document in which the non- movant has reproduced the facts and citations verbatim as set forth by movant

Yanna- Trombley presented the issue to the Appellate Court that proper procedures were not taken in accordance with Fed. R. Civ. P. 56 (d), reproduced at 25a and 26a.

The docket provided evidence that there was no hearing of the motion as Ordered by Judge Higgins . There was no examining the pleadings and evidence before it and by interrogating counsel to ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith converted. There was no order specifying the facts that appear without substantial controversy, according to Fed R. Civ. Rule 56 (d) .

It shall thereupon make an order specifying the facts that appear without substantial controversy , including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just, Fed R. Civ. Rule 56 (d) .

There shall be no motion day. All motions shall be in writing and shall be decided by the Court with out oral hearings unless otherwise ordered by the Court; LR78.01.

The Honorable Judge Higgins on October 20, 2004 Ordered that after Motions for summary Judgment he will

have another conference and set a pretrial date, pretrial conference date and a trial date, see transcript of hearing before the Honorable Thomas A. Higgins page 39 lines 2-7, reproduced at 12a.

However extreme prejudice resulted when on about April 26, 2005 the action was transferred to the Honorable Judge Haynes Jr. and there was no hearing , and or conference as ordered by Judge Higgins pursuant to Fed. R. Civ. P. 56 (d) and Local Rule LR 78 .01 . There was no Third Pretrial Procedure; Resolution of discovery Disputes . Jointly signed discovery/ protective order dispute statement setting forth precisely the remaining issues in dispute and the reasons why these issues remain unresolved.[1]

Petitioner, demonstrated that defendant withheld evidence that was used against Petitioner, in Summary Judgment.

Petitioner, filed a timely Motion for relief from order pursuant to Federal Rules of Civil Procedure Rule 60 (b). However on September 28, 2006 the District Court denied the Rule 60 (b) Motion.

Failure to Disclose ; False or Misleading Disclosure; (1) A party that without substantial justification fails to disclose information required by **Fed. R. Civ. P. 26 (a) or 26 (e)(1)** or to amend a prior response to discovery as required by **Fed. R. Civ. P. 26 (e)(2),** is not unless, such

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[1] Page 47 of Practice and Procedure Manual of Judge and Magistrate Judges United States District Court Of Tennessee Columbia Division.

failure is harmless, permitted to use evidence at trial, at hearing or on motion any witness or information not so disclosed. Fed .R. Civ. P. 37(a) (c)

(c) Whether the United States Court of Appeals for the Sixth Circuit. has erred by considering unsupported statements with out supporting documents and /or evidence used to make their decision for Defendant.
Fed .R. Civ. P. 37(a) (c). Factual Issues are supposed to be resolved by the jury.

(d)Whether the United States Court of Appeals for the Sixth Circuit. has erred by not considering that Plaintiff was protected under Title VII because she had filed a previous lawsuit which resulted in the Federal Settlement Agreement to be reinstated, see 22a.

In error Appeal Court stated in 2002, the parties settled a previous ADA action filed by Yanna- Trombley, and she was reinstated. see Order Court of Appeals for the Sixth Circuit reproduced at 3a. This statement is unsupported and disputed by Plaintiff. The record shows that in 2002, the parties settled a previous Title VII action filed by Yanna- Trombley, see 22a. Whether Yanna-Trombley was not reinstated according to Federal settlement agreement is a question for a jury.

(1) Whether the United States Court of Appeals for the Sixth Circuit. has erred by considering that " Nothing was presented to establish a causal connection between Yanna- Trombley's Title VII activity and her alleged firing or constructive discharge." see Order Court of Appeals for the Sixth Circuit reproduced at 6a and THRC complaint

filed August 15, 2003.

However the record contains direct evidence of a causal connection between Yanna- Trombley's prior Title VII Law Suit , participation in protected Title VII activity and her alleged firing or constructive discharge and other retaliatory acts."

(2) Whether the United States Court of Appeals for the Sixth Circuit. has erred by confusing the facts and element s Plaintiff needed to show Constructive Discharge in Plaintiff's case. 'the eventual termination of Yanna-Trombley's employment, which Yanna- Trombley argues alternatively was a firing or a constructive discharge and defendant maintains was a voluntary quit. This dispute is not material because, even accepting Yanna- Trombley's version of the facts, she failed to show that she was replaced by a younger person or that a younger person was not terminated for comparable conduct." See Order States Court of Appeals for the Sixth Circuit reproduced at 6a.

(3) Whether the United States Court of Appeals for the Sixth Circuit. has erred by confusing the elements and facts needed to show hostile work environment in Plaintiff's case. " Yanna- Trombley alleged that she felt threatened by people making faces at her,". See Order from United States Court of Appeals for the Sixth Circuit reproduced at 7a.

However, the Plaintiff presented evidence that the same employee (person), named in first Title VII Law Suit was threatening when Petitioner /Plaintiff returned to work after

participating in that first Title VII Law Suit . See Order from Court of Appeals for the Sixth Circuit reproduced at 7a.

Plaintiff presented overwhelming evidence that Plaintiff was being coerced to sign different and unfamiliar (documents) devices that shown on the face of them to discriminate against her. Plaintiff presented evidence that she was coerced in to signing papers that went against settlement agreement on the first day back or she would not be put on the pay role.

The Appeal Court says " Yanna- Trombley's subjective perceptions and vague allegations were not sufficient to state a claim. *Id. At* 464." See Order from United States Court of Appeals for the Sixth Circuit reproduced at7a .

(4) Whether the United States Court of Appeals for the Sixth Circuit has erred by deciding that " The record in this case presents no genuine issue on any of Yanna-Trombley's Claims." See Order from United States Court of Appeals for the Sixth Circuit reproduced at 6a

(5) Whether the United States Court of Appeals for the Sixth Circuit has erred by deciding that " The only even arguable adverse action shown in this case ....." See Order from United States Court of Appeals for the Sixth Circuit reproduced at 6a

(6) Whether the United States Court of Appeals for the Sixth Circuit has erred by confusing the facts and unsupported finding of being reinstated and treated in every way same as the other employees . See Order Court of Appeals for the Sixth Circuit reproduced at 5a

Whether Defendant Saturn /GM intentionally placed Yanna- Trombley into the Red Zone, intentionally restricted her from the property so she could not work, intentionally took her earned wages from her and /or intentionally stopped her from calling the police, are for a jury to decide.

Employers who discriminate are not likely to announce their discriminatory motive. Plaintiff's circumstantial proof of discrimination can also be used by the plaintiff to show pretext. *Texas Depart. of Community affairs v Burdine* 450 U.s., at 255, n. 10, 101 S. Ct., at 1095, n. 10.

Reasons for Granting the Petition

Judge Patricia M. Wald of the District of Columbia Circuit had commented:

I believe our circuit's experience shows that we are now at a stage where the focus should be on ensuring that summary judgment stays within its proper boundaries, rather than on encouraging its unimpeded growth. Its expansion across subject matter boundaries and its frequent conversion from a careful calculus of factual disputes (or the lack thereof) to something more like a gestalt verdict based on an early snapshot of the case have turned it

into a potential juggernaut which, if not carefully monitored, could threaten the relatively small residue of civil trials that remain.[2]

Conclusion

Review by this Court is necessary to ensure the proper interpretation of Title VII and to uphold Process and Procedures thus defending public interest concerning Civil Rights.

Respectfully submitted ; January 25, 2007

Marie K. Yanna- Trombley - ph. 931 270-9688
1090 Spring Place Road ,
Lewisburg , Tennessee , 37091

[2] Patricia M. Wald, Summary Judgment at Sixty, 76 TEX. L.REV. 1897,1917 (1998). From Collin J. Cox, Reconsidering the Sham Affidavit Doctrine, 50 Duke L.J. 261 (2000)

NOT RECOMMENDED FOR FULL -TEXT PUBLICATON

FILED
JUL 20 2006
LEONARD GREEN,
Clerk

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

No. 05-6419

UNITED STATES COURT OF APPEALS FOR THE SIXTH CORCUIT

MARIE K. YANNA-TROMBLEY
Plaintiff-Appellant,
v.
SATURN CORPORATION, a subsidiary of General Motors Corp.,
Defendant-Appellee

ORDER

Before: DAUGHTREY and COOK, circuit Judges; COLLIER, Chief District Judge .*

Marie K. Yanna-Trombley, a Tennessee citizen, appeals pro se the summary judgment for

defendant in an employment discrimination action filed pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C. § 1201 et seq., the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e seq., an the Tennessee Human Rights Act, Tenn. Code Ann. § 4-21-101 et seq. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Yanna- Trombley filed a complaint against her former employer alleging discrimination based on disability, age, and retaliation for conduct protected under Title VII. She alleged that defendant created a hostile work environment and constructively discharged her, Defendant moved for

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* The Honorable Curtis L. Collier, United States Chief District Judge for the Eastern District of Tennessee, sitting by designation.

Summary judgment, and Yanna- Trombley filed a response. The district court granted judgment for defendant. On appeal, Yanna- Trombley reasserts her claims.

Upon de novo review, we conclude that the summary judgment for defendant must be affirmed, as there is no genuine issue of material fact, and defendant was entitled to judgment as a matter of law. *Mitchell. Toledo Host.*, 964 F. 2d 577, 581 (6th Cir. 1992)

The record shows that Yanna- Trombley was employed by General Motors since 1977. In 1991, she transferred to Saturn, In 2002, the parties settled a previous ADA action filed by Yanna- Trombley, and she was reinstated. Yanna-Trombley alleged that she was made to sign an employment agreement form which she felt was inconsistent with the settlement agreement, but which defendant stated was standard practice. She was also placed in a temporary position, which she objected to, until she was able to transfer into a regular assembly line position. Her pay rate remained the same. In January 2003, Yanna- Trombley complained that a co-worker was waving at her and making faces, which she felt threatened by. Shortly thereafter, she was transferred away from that employee. Later, she complained that another co- worker was interfering

with her work and implying that she was not capable of doing her job. This co-worker went on disability leave shortly afterwards. In March and April of 2003, Yanna-Trombley complained that a co-worker was leaving supplies in her work area to cause her to trip. In June, she complained that a supervisor pushed her. Defendant explained that Yanna- Trombley was working in a congested area. Yanna- Trombley filed an EEOC complaint. In August, Yanna- Trombley refused to sign a form that indicated that she was in a "Red Zone, " a type of disciplinary probation.

On September 20, Yanna - Trombley refused to sign a form indicating which vehicles she had worked on during that shift, which she believed would constitute an admission by her that she needed assistance. She also refused to attend a meeting to discuss her refusal to sign this form. In stead she attempted to call her husband from a telephone in her work area. Her supervisor hung up on her call. Yanna- Trombley then went to her locker and collected her things. She returned to the phone and attempted to call 911; the supervisor hung up on her again. She then left the plant. Defendant attempted to schedule meetings with Yanna- Trombley on September 23 and 26, but

Yanna-Trombley claimed that she did not get notice of either meeting until after the meeting times. She attempted to return to work on September 23 but was turned away by a guard in the parking lot. Defendant informed her that she was considered to have voluntarily quit. In February 2004, defendant offered to allow Yanna- Trombley to apply for disability, but Yanna- Trombley refused the offer.

Yanna- Trombley asserted that defendant discriminated against her on the basis of a perceived mental disability. She was required to establish that defendant regarded her as disabled in order to state a claim. *Sutton v. United Air lines, Inc.*, 527 U.S. 471, 489 (1999). The record is lacking any such evidence. Defendant reinstated Yanna- Trombley to a regular job and treated her in every way the same a other employees.

Yanna- Trombley also asserted that defendant discriminated against her on the basis of her age. The record lacks any direct evidence of age discrimination. Yanna- Trombley could establish a prima facie case, however, by showing that she is over forty, that she was qualified for her job, that she was subjected to an adverse employment action, and that she was replaced by a younger person or treated differently than a younger person for the same conduct. *See Talley v. Bravo Pitino Rest,*. 61 F. 3d 1241, 1246 (6th Cir. 1995). An adverse employment

action has been defined as a materially adverse change in the conditions of employment. *Hollins v. Atlantic Co.,* 188F. 3d 652 (6th Cir. 1999). The only even arguable adverse action shown in this case was the eventual termination of Yanna- Trombley's employment, which Yanna- Trombley argues alternatively was a firing or a constructive discharge and defendant maintains was a voluntary quit. This dispute is not material because, even accepting Yanna- Trombley's version of the facts, she failed to show that she was replaced by a younger person or that a younger person was not terminated for comparable conduct.

Yanna- Trombley also alleged that she was retaliated against for her prior lawsuit and her EEOC filing, conduct protected by Title VII. To state a claim, she was required to show that defendant knew of her protected activity, an adverse employment action was taken against her, and there was a causal connection between her activity and the adverse action. *Abbott v. Crown Motor*

Co., 348 F. 3d 537, 542 (6th Cir. 2003). Nothing was presented to establish a causal connection between Yanna- Trombley's Title VII activity and her alleged firing or constructive discharge.

Yanna- Trombley alleged a hostile work environment based on discrimination. She was

required to show harassment based on her age, disability, or retaliation , which interfered with her work and which defendant failed to prevent or correct. *Bowman v. Shawnee State Univ.,* 220 F.3d 456, 462-63 (6th Cir.2000). Yanna- Trombley alleged that she felt threatened by people making faces at her, being forced to work in close quarters, and being required to sign paperwork and attend meetings. Yanna- Trombley's subjective perceptions and vague allegations were not sufficient to state a claim. *Id. At* 464.

Finally, Yanna- Trombley alleged that she was constructively discharged. Such a claim requires a showing that repentant deliberately created intolerable working conditions as perceived by a reasonable person with the intention of forcing an employee to quit. *Logan v. Denny's, Inc.,* 259 F.3d 558, 568-69 (6th Cir. 2001). Nothing was presented in this case which would be perceived by a reasonable person as intolerable.

The record in this case presents not genuine issue of material fact on any of Yanna-Trombley's claims. The Summary judgment for defendant is therefore affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

"s/ Leonard Green "
Clerk

No 05-6419

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MARIEK. YANNA- TROMBLEY.
Plaintiff- appellant,
v.
SATURN CORPORATION, A SUBSIDIARY OF GENERAL MOTORS, CORPORATION,
Defendant-Appellee,

FILED
OCT 27 2006
LEONARD GREEN, Clerk

ORDER

BEFORE: DAUGHTREY and COOK, Circuit Judges; and Collier, * District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of his court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

"s/ Leonard Green "
Leonard Green, Clerk

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* Hon. Curtis L. Collier, chief United States District Judge for the Eastern District of Tennessee, sitting by designation.

Case No: 05-6419

ORDER

FILED
NOV 13 2006
LEONARD GREEN, Clerk

MARIE K. YANNA- TROMBLEY
Plaintiff - Appellant

v.

SATURN CORPORATION, a subsidiary of General Motors, Corp.
Defendant - Appellee

BEFORE: DAUGHTREY and COOK, Circuit Judges; COLLIER, District Judge*

Upon consideration of the appellant's motion to stay mandate,

It is ORDERED that the mandate be stayed to

allow appellant time to file a petition for a writ of certiorari, and thereafter until the Supreme Court disposes of the case, but shall promptly issue if the petition is not filed within ninety days from the date of final judgment by this court.

ENTERED BY ORDER OF THE COURT

"s/ Leonard Green / sgc"
Leonard Green, Clerk

* the Honorable Curtis L. Collier, Chief U.S. District Judge for the Eastern District Of Tennessee, sitting by designation.

Completed
And when that comes in, I am going to
hold another conference and fix a date for motions,
dispositive motions, motions for summary judgment.
Then after those matters are handled, I
Will have another conference and set a pretrial date,
pretrial conference date and a trial date.

Ms. Johnson: Yes, judge.

NATIONAL BANK

Member FDIC primary Account: 7764731
Page 1 of 3

Last statement: September 09, 2003
This statement: October 08, 2003
Total days in statement period: 30 9

Direct Inquiries to
1 St Farmers & Merchants National Bank
P.O. Box 1148
Columbia, TN 38402-1148

MARIE YANNA TROMBLEY
1090 SPRINGPLACE RD
LEWISBURG TN 37091

The Trust & Financial Management Department can help you plan for retirement, set investment goals and manage your assets. Call 388-3145 or 800-882-8378 today for an appointment.

Regular Checking
Account Number 0007764731
Enclosures 9

Low balance	$31.95
Average balance	$183.61
Avg collect	$183.00

Daily Activity

Date	Description	Additions	Subtractions	Balance
09- 08	Beginning balance			$197.83
09-10	Check 266		-52.18	145.65
09-15	'Preauthorized Credit GENERAL MOTORS EDI PAYMENT 030915 SA20437317	1,490.90		1,636.55
09-15	Check 270		-1400.00	236.55
09-15	Check 268		-22.01	214.54
09-17	Check 272		-11.97	202.57
09-24	Check 273		-93.31	109.26
09-29	Check 274		-10.00	99.26
09-30	'Preauthorized Credit GENERAL MOTORS EDI PAYMENT 030930 SA20444117	1,451.86		1,551.12
10-01	'Preauthorized Wd GENERAL MOTORS EDI PAYMENT 030930 SA20444117R		-1,451.86	99.26
10-02	Check 275		-25.98	73.28
10-07	Check 276		-32.33	40.95
10-08	Check 277		-9.00	31.95
10-08	'Maintenance Fee		-6.00	25.95
	Ending totals	2,942.76	-3,114.64	$25.95

Saturn Corporation
100 Saturn Parkway
P.O. Box 1500
Spring Hill, TN. 37174-1500

To: Maria Yanna- Trombley
From: Terry Wonderlin
Date: February 2, 2004

Subject: Agreement and Release between Saturn and Maria Yanna- Trombley

Agreement and Release between Saturn and Maria Yanna- Trombley

Conditioned upon a) your agreement that this Agreement and Release will constitute a full and final release of any and all claims or grievances that you have or might have against Saturn (and GM) and their current or former employees and your bargaining representatives; b) your effecting a full and final withdrawal or dismissal of any administrative claims or charges (except for any unemployment or workers' compensation claim) or any other litigation involving Saturn, GM, or their current or former employees; c) your directing your bargaining representatives to withdraw all grievances; d) your agreement to waive and relinquish any contractual seniority rights and agreement to never again work or seek to work for Saturn or GM; and, e) your bargaining

representative's actually and finally withdrawing all grievances and demands related to your employment with and/or separation from Saturn, Saturn and General Motors will permit you to be reinstated for the sole purpose of applying for Sickness and Accident (S & A), Extended Disability Benefits (EDB) and /Or Total and Permanent Disability Retirement (T& PD) benefits. Saturn and GM have made no commitment regarding the ultimate determination on such application. In addition, the bargaining parties and Ms. Yanna -Trombley understand and agree that this settlement does not require, and will not include, any retroactive back pay o benefits coverage, including Health Care, S&A, EDB, etc. By offering and entering into this Agreement and Release, Saturn and GM are not admitting any wrongdoing or liability. Saturn (and GM) expressly deny that you have been the subject of any unlawful or inappropriate treatment. In presenting this offer, Saturn is making an effort to seek a compromise in order to avoid the costs, burdens, and uncertainty of litigation.

Ms. Yanna-Trombley is releasing her employer and unions from any and all claims. As such, she will permitted 21 days to consider this offer. She is also encouraged to review the terms of this agreement with an attorney of her choice; whether she does so is her choice exclusively. If executed, Ms Yanna-Trombley will be permitted 7 days to revoke this

agreement. Revocation can be made by delivering a written Notice of Revocation to Terry Wonderlin, c/o Saturn Corporation, 100 Saturn Parkway, P.O. Box 1500, Spring Hill, TN 37174-1500. For this revocation to be effective, written notice must be received by Terry Wonderlin no later than the close of business on the seventh (7) day after employee signs this Agreement. If Employee revokes this Agreement it shall not be effective or enforceable and Employee will not receive the benefits described above.

Agreed and accepted:

_____	"s/ T Wonderlin"
Maria Yanna- Trombley	Management
SS# _____	Date 2-3-04

CM/ECF -DC V2.5 (October 2005) -Docket Report

01/26/2006 105 ORDER denying 103 Motion for response to deft's stmt of undisputed material facts to be transmitted to US Court of Appeals in support of appeal (mtn denied as an effort to place matters before the Court contrary to the Court's order and Local Rule 8b7. Pltf has filed a notice of appeal).. Signed by Judge William J. Haynes on 1/24/06. (mk,) (entered: 01/26/ 2006)

From the THRC?EEOC file:
Note to File
Date August, 2003

Subject: Yanna Placed in Red Zone (Sharon Eppler)
"I am trying to retain, and I wrote down things afterwards unfortunately because it all went by so strangely. I said at that point I think that we may be done with this."

THRC/ EEOC file exhibit 22, Rpt # 031R-0734 / 9-23-03

Officer. Name: Mark Murphy "Pursuant to a directive from PSC S. Eppler, T/M Marie Yanna-Trombley and spouse Ed Trombley were stopped and denied access due to restriction status, by S/O Lumpkins. ", "...., I observed the vehicle leaving and Marie talking to SFO Ray from her passenger side window.

Incident Report Maury County Sheriff's Department
TN 0600000

Case No. 2003-04129
Reporting Officer T-DiLizD

Report Class offense Report type intial
Occurrence date 9-20-03
Occurrences time 10:48 pm
Times TR 2128 TD 2152 TA 2152
Incident Location Saturn

Offense Assault UCR code 13 A
TCA code 39-13-101

Offender Last First
Salima Dave
Address Works at Saturn, Management OMA
/sex Male

Victim Last First Middle Home phone
Trombley Marie Yanna 270 9688
Address
1090 Spring Place Rd. Lewisburg TN 37091
DOB Age Height Weight Eye Hair
0-01-56 5'3" 110 Br. Br.
Driver's License # State
75546378 TN

Some of the important information reproduced from Police report

CM/ECF - DC V2.5 (October 2005) - Docket Report

09/28/2006 111 ORDER : From the Court's review this 110 Motion for Reconsideration does not present any matters to justify the relief sought. This 110 Motion for Reconsideration is denied. Signed by Judge William J. Haynes on 9/28/06. (km) (cc: 6CCA via Email) (Entered: 09/28/2006)

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE COLUMBIA DIVISION

RECEIVED in clerk's office
Aug 21 2002
U.S. DISTRICT COURT MID.DIST. TENN.

FILED
US DISTRICT COURT
MIDDLE DISTRICT OF TENN
AUG 30 2002

BY _____
DEPUTY CLERK

CASE No. 1-02-0045
Judge Thomas A. Higgins
Magistrate Judge Juliet Griffin
Jury Demand

MARIE K. YANNA- TROMBLEY
VS.
SATURN CORPORATION

AMENDED COMPLAINT UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

1. This action is brought pursuant to title VII of the Civil Rights Act of 1964 for employment discrimination. Jurisdiction is specifically conferred

on the Court by 42 U.S.C. SECTION 2000e-5. Equitable and other relief are also sought under 42 U.S. C. section 2000e-5 (g) .

2. Plaintiff, Marie K. Yanna-Trombley is a citizen of the United States and resides at 1090 Spring Place Rd. Marshall County, Lewisburg, Tennessee 37091; telephone number 931-270-9688

3. Defendant Saturn Corporation lives at, or its business is located at 100 Saturn Parkway P.O. Box 1500, Spring Hill , Maury County, Tennessee 37174.

4. Plaintiff sought employment from the defendant or was employed by defendant at 100 Saturn Parkway, Spring Hill, Maury County, Tennessee 37174.

5. Defendant discriminated against plaintiff in the manner indicated in paragraphs 8-9 of this complaint on or about 20, June 2001.

6. Plaintiff filed charges against the defendant with the Tennessee Human Rights Commission or the Equal Employment Opportunity Commission charging the defendant with the acts of discrimination indicated in paragraphs 8-9 of this complaint on or about 04, October 2001.

CM/ECF- DC V2.5 (October 2005)- Docket Report

Page 5 of 10

1/14/2005 42 MOTION by Pltf to amend complaint (w/attached second amended complaint) (km) (entered: 01/14/2005)

CM/ECF- DC V2.5 (October 2005)- Docket Report

Page 6 of 10

03/25/2005 61 RESPONSE by Pltf to stmt [50-1] (km) (Entered: 03/28/2005)

CM/ECF- DC V2.5 (October 2005)- Docket Report

Page 7 of 10

O7/15/2005 73 ORDER granting [42] Motion to Amend/Correct . Signed by Judge William J. Haynes on 7/14/05. (km) (Entered: 7/15/2005)

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5. What specific issues do you wish to raise on appeal/

Whether the court based their decision on documents that Ms. Trombley compelled at Dockets 17,33, and 38, including the alleged voluntary quit policy or reinstate/rehire policy in which Saturn Corporation may now be in contempt of court by not supplying to Ms. Trombley. See dockets 68, 70, and 71.

Whether the court erred by citing **Fed. R. Civ. P. 56 (d)** when there was no motion or hearing as described in **Fed. R. Civ. P. 56 (d)** and facts that exist with substantial controversy?

Whether the Court is in error by ruling in favor of Appellee as the Appellant Ms. Trombley sought evidence that has been concealed? No Policy exist because Saturn did not produce the alleged process and procedures concerning alleged policy causing a Federal Court Agreement to reinstate a person to sign a Employment agreement, or an alleged volunteer quit policy. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. **Fed. R. Civ. P. 56 (e)** A Party that without substantial justification fails to disclose information required by **Fed. R. Civ. P. 26 (a)or 26(e)(1)** or to amend a prior response to discovery as required by **Fed. R. Civ. P. 26 (e) (2),**is not unless, such failure is

Harmless, permitted to use evidence at trial, at hearing or on motion any witness or information not so disclosed. **Fed. R. Civ. P. 37 (c)** and the court order Appellee Saturn Corp. to disclose the process and procedures for reinstating the Ms. Trombley as per the settlement agreement . See Docket 38 and Docket 68 order.

Whether Court erred in calling and treating the Declaration of Sharon Eppler as a sworn Affidavit?

Whether all the claims had been adjudicated on pursuant to **Fed. R. Civ. P. 54 (b) and Fed. R. Civ. P. 60**

The order granting the Defendants' motion for summary judgment (Docket No. 75 from the United State District Court for the Middle District of Tennessee, Columbia Division should be reversed.

Respectfully submitted:
"s/ *Marie K. Yanna-Trombley* "
Marie K. Yanna-Trombley Ph. 931 270-9688
1090 Spring Place Road
Lewisburg, Tennessee, 37091